

AMENDMENT #3 TO AGREEMENT TO PERFORM PROFESSIONAL ENGINEERING  
SERVICES FOR SYSTEM IMPROVEMENT PROJECTS BETWEEN THE CITY OF  
DURHAM AND KIMLEY-HORN AND ASSOCIATES, INC.

This Contract Amendment ("Amendment #3") is dated and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Kimley-Horn and Associates, Inc. ("Engineer") and City of Durham ("City").

The City and the Engineer entered into a contract titled "Agreement to Perform Professional Engineering Services for System Improvements between the City of Durham and Kimley-Horn & Associates, Inc." dated January 10, 2008. Amendment #1 increased the scope of services and costs for the Systems Improvements Project. That contract is referred to as the "Original Contract." Amendment #2 to the Original Contract is a time extension for the Systems Improvement Project without any increased engineering services or costs. Amendment #3 to the Original Contract is an increase in the construction administration and construction observation services costs for the Systems Improvement Project associated with Amendment #2. The Original Contract is hereby amended as follows:

1. In EXHIBIT C – PAYMENTS TO ENGINEER – Article 4, Subsection C4.01(A)(1):  
***shall be DELETED and REPLACED with:***

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for Engineer's Resident Project Representative, and Post-Construction Phase services, if any, as follows:

1. A Lump Sum amount of **\$1,452,108.70** based on the following assumed distribution of compensation:

	TASK	AMOUNT
a.	Study and Report Phase	\$ 104,000.00
b.	Preliminary Design Phase	\$ 123,893.00
c.	Final Design Phase	\$ 713,891.00
d.	Bidding and Negotiating Phase	\$ 34,233.00
e.	Construction Phase	\$450,268.70
f.	Post Construction Phase	\$ 25,823.00
	TOTAL AMOUNT	\$ 1,452,108.70

2. In EXHIBIT C – PAYMENTS TO ENGINEER – Article 4, Subsection C4.02(A)(1):  
***shall be DELETED and REPLACED with:***

- A. Owner shall pay Engineer for Basic Services having an undetermined scope as follows:

1. Resident Project Representative Services. *For services of Engineer's Resident Project Representative, if any, under Paragraph A1.05.A.2.a of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of*

*Engineer's employees times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$363,771.75 based upon Contract Times as set forth in Paragraph C4.01(A)(5).*

3. In EXHIBIT C – PAYMENTS TO ENGINEER – Article 4, Subsection C4.02(A)(2):  
*shall be DELETED and REPLACED with:*

2. **Post-Construction Phase Services.** *For Post-Construction Phase services under paragraph A1.06 of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$26,500.00.*

4. In APPENDIX 3 to this EXHIBIT C – ENGINEER CONSULTANT'S CHARGE – *shall be DELETED and REPLACED with:*

#### **Engineer's Consultant's Charge**

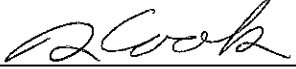
*Current agreements for engineering services stipulate that the Engineer's Consultant's Charges are subject to review and adjustment per Exhibit C. Engineer's Consultant's Charges for services performed on the date of the Agreement are:*


	<i><b>TASK</b></i>	<i><b>AMOUNT</b></i>
<i><b>a.</b></i>	<i><b>Data and Field Coordination Services</b></i>	<i><b>\$ 5,765.00</b></i>
<i><b>b.</b></i>	<i><b>Field Surveys</b></i>	<i><b>\$ 111,946.00</b></i>
<i><b>c.</b></i>	<i><b>Easement Maps (19 plats)</b></i>	<i><b>\$ 20,851.00</b></i>
<i><b>d.</b></i>	<i><b>Abandonment Surveys</b></i>	<i><b>\$ 26,600.00</b></i>
<i><b>e.</b></i>	<i><b>Abandonment Easements (77 properties)</b></i>	<i><b>\$ 10,400.00</b></i>
<i><b>f.</b></i>	<i><b>Geotechnical Investigations</b></i>	<i><b>\$ 63,400.00</b></i>
<i><b>g.</b></i>	<i><b>Subsurface Utility Explorations</b></i>	<i><b>\$ 78,976.00</b></i>
<i><b>h.</b></i>	<i><b>Quality Control Testing</b></i>	<i><b>\$ 31,000.00</b></i>
<i><b>i.</b></i>	<i><b>Coatings Inspections</b></i>	<i><b>\$ 12,535.00</b></i>
<i><b>j.</b></i>	<i><b>Miscellaneous Design Extensions</b></i>	<i><b>\$150,000.00</b></i>
	<i><b>TOTAL AMOUNT</b></i>	<i><b>\$511,473.00</b></i>

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

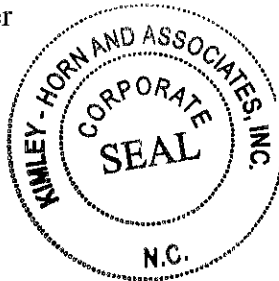
ATTEST:

**KIMLEY-HORN AND ASSOCIATES, INC.**

  
By: Richard Cook  
Title of Officer: Senior Vice President

  
By: Kevin F. Carter, P.E.  
Title of Officer: Senior Project Manager

Corporate Seal - Engineer



Date Signed: 1/25/2011

State of North Carolina

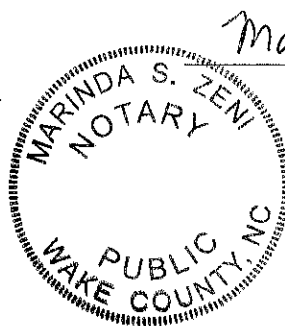
ACKNOWLEDGMENT BY CORPORATION

County of Wake

I, a notary public in and for the aforesaid county and state, certify that Kevin F. Carter personally appeared before me this day and stated that he or she is Secretary of Kimley-Horn and Associates, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing Contract or Agreement with the City of Durham was signed in its name by its Senior Vice President, whose name is Richard Cook, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the 25<sup>th</sup> day of January, 2011.

My commission expires:

8/20/14



Marinda S. Zeni  
Notary Public

**CITY OF DURHAM**

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_

Thomas J. Bonfield – City Manager

**ACKNOWLEDGMENT BY CITY OF DURHAM**

***Name of other party to the contract:*** Kimley-Horn and Associates, Inc.

***Title of the contract:*** SYSTEM IMPROVEMENTS PROJECT

I, \_\_\_\_\_, a notary public, certify:  
*(Type or print name of Notary Public)*

(1) \_\_\_\_\_ personally appeared before me *(Type or print name of City Clerk or Deputy City Clerk who attested)* in Durham County, N. C. on this day; (2) I have personal knowledge of her identity; and (3) she acknowledged signing the foregoing document as City Clerk or Deputy City Clerk of the City of Durham.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_



Kimley-Horn  
and Associates, Inc.

*ATTACHMENT NO. 1*

January 20, 2011

Mr. Donald F. Greeley, P.E., R.L.S.  
Director of Water Management  
City of Durham Department of Water Management  
101 City Hall Plaza  
Durham, NC 27701

■  
P. O. Box 33068  
Raleigh, North Carolina  
27636-3068

Re: **Scope for Professional Engineering Services  
for Amendment No. 3 to the  
System Improvement Projects**

Dear Don:

Kimley-Horn and Associates, Inc. is pleased to submit our proposal for an increase in the project Scope of Services for Amendment No. 3.

**GENERAL INFORMATION**

The "timing" of Amendment No. 3 is coordinated with and based on a suitable milestone date for account accuracy within our Corporate accounting system. The date of December 31, 2010 is the closeout of our financial year and provides us with the account history needed to provide the City with an accurate assessment of the project finances.

**SCOPE OF SERVICES**

The Scope of Services for Amendment No. 3 will consist of the associated compensation for the extension of the construction office services and construction observation services increased in Amendment No. 2 required for the construction of the System Improvement Projects. It is anticipated that these fees will support the associated services through the end of the construction for the Hillandale Road Dual Waterline Replacement – Phase 1 (HRDWR-1) project.

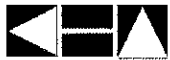
During the City's review of our Amendment No. 3, for the Additional Services fees submitted herein, we ask that you please keep these significant facts in mind:

- In accordance with Amendment No. 2 approved by the City in July 2010 our contractual time was increased from 330 consecutive calendar days to 848 consecutive calendar days to cover the revised contract periods. This was done so without an increase in our fees. This was also done with the specific understanding that a subsequent Amendment No. 3 would be processed to increase the construction administration and construction observation services fees proportionally.

■  
TEL 919-677-2000  
FAX 919-677-2050



- In accordance with Exhibit A, Part 1, Article A1.05(A)(19) of our Agreement, all construction contracts are supposed to run concurrently. In reality, not only have they not run concurrently, each construction contract has literally run end-to-end with very little overlapping from one contract to another.
- In Exhibit A, Part 2 of our Agreement, all Additional Services associated with time extensions are supposed to be converted over to and billed on a "cost-plus" basis in accordance with the rates and fees found in the Appendix 2 to Exhibit C. In an effort to work with the City and to "stretch out" the construction administration and construction observation services fees as much as practical, Kimley-Horn made a business decision to not implement the provisions of Exhibit C, Article C4.04(D) and C4.05(B), and to continue to accrue our costs based on our 2008 employee hourly rate schedule until the overall Lump Sum budget was exhausted.
- In Exhibit A, Part 2, Article A2.01(A)(21)(r) of our Agreement, all re-designs after the 85% final approval phase are considered to be Additional Services. After the receipt of Bids and the Award of the contract to Sullivan-Eastern, a resurgent NCDOT permitting approval process determined that the 36" Hillandale Road Dual Waterline Replacement could not be located within the pavement section of Hillsborough Road. After several meetings with NCDOT and significant debate it was decided the best alternative was to relocate the waterline outside the pavement along Hillsborough Road between Hale Street and Rutherford Street. This required additional construction drawing revisions and permitting re-submittals in addition to the subsequent evaluation of a Change Order from Sullivan-Eastern.
- With the Notice to Proceed date of February 2, 2009 for Contract No. 1 – Erwin Road Waterline Replacement and Fulton Street Sewer, which is the contract start time for Kimley-Horn's overall construction administration and construction observation services, a contractual time of 330 consecutive calendar days would have had an end date of December 29, 2009. However, as previously discussed with the City, with the combination of not having to provide construction administration services for all three projects running concurrently, by billing at the "2008 rates", the addition of fees in Amendment No. 1, and by implementing unique project management procedures, Kimley-Horn was able to extend the construction administrative coverage time an additional 7 months [July, 2010] before the Lump Sum construction administration services budget was completely depleted.
- Additionally, the fees for the construction observation services are contractually billed on a cost-plus basis and with the combination of not having to provide construction observation services for all three



projects running concurrently, by billing at the "2008 rates", and the addition of fees in Amendment No. 1, Kimley-Horn was able to extend the construction observation coverage time an additional 10½ months [mid-November, 2010] before the Cost-Plus construction administration services budget was completely depleted.

- In accordance with Exhibit A, Part 2, Article A2.01(A)(16) of our Agreement, and the agreed upon liquidated damages settlement between the City and CSSI, the accrued costs of \$19,679.91 for additional construction administrative services and \$17,511.80 for additional construction observation services should be credited toward the City's additional costs included in Amendment No. 3, Table 3-1.
- In accordance with Exhibit A, Part 2, Article A2.01(A)(19) and Exhibit C, Article C4.02(A)(2) of our Agreement, all "legal fees" associated with the CSSI liquidated damages legal mediation procedures were to be billed at \$2,000 per day or any part thereof. Kimley-Horn again, made a business decision to continue to accrue our costs for these professional services based on our 2008 rate schedule and not at the approved contractual rate indicated hereinabove. The additional cost of \$7,221.35 for these services is included in the Amendment No. 3 costs that are indicated in Table 3-1.
- Looking forward to the completion of these construction projects, in accordance with Contract No. 3, Change Order No. 1 the Contract Time was increased by 100 consecutive calendar days. In accordance with Exhibit C, Article 4, C4.01(A)(5) and C4.02(A)(1) of our Agreement, both the construction administration and the construction observation services fees should also be adjusted proportional to the increase in the Contract Time. Accordingly, as illustrated in Amendment No. 3, Table 3-1, Column 7, based on an average monthly monetary burn rate for these services we have estimated the amount of additional fees that will be required to complete the construction of Contract No. 3 – Hillandale Road Dual Waterline Replacement – Phase 1. Note that monies procured in Amendment No. 1 for construction administration and the construction observation services associated with the construction of the Hillandale Road Dual Waterline Replacement – Phase 2 (HRDWR-2), have been re-allocated to cover the overruns associated with the hereinbefore mentioned fees, and will at some future date need to be re-established for the completion of the HRDWR-2 project.
- Also looking forward, in order for us to compensate our subconsultants in a timely manner, Kimley-Horn requests that the City reimburse us the total amount indicated in Table 3-1, Column 6 for the Budget Deficit through December 31, 2010. Subsequent reimbursements for these services would then be in accordance with



Exhibit A, Part 2 and Appendix 1 and 2 to Exhibit C, from the standard hourly rate schedule and the reimbursable expense schedule, throughout the remainder of the project construction.

We greatly appreciate the opportunity to submit this revised Scope of Services to the City of Durham. We would be happy to answer any questions that you might have concerning our proposed Scope and Fee.

Very truly yours,

**KIMLEY-HORN AND ASSOCIATES, INC.**

*Kevin F. Carter*

Kevin F. Carter, P.E.  
Senior Associate/Senior Project Manager

Cc: Sam O'Dell – KHA Accounting



